

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	GEN Docket No. 90-314
to Establish New Personal Communications	)	ET Docket No. 92-100
Services, Narrowband PCS	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive Bidding,	)	
Narrowband PCS	)	

To: The Commission

**COMMENTS OF WEBLINK WIRELESS, INC.**

WebLink Wireless, Inc. ("WebLink"), by its attorneys, hereby submits these comments in response to the Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 00-159, released by the Federal Communications Commission (the "Commission") in the above-captioned proceedings on May 18, 2000 (the "Report & Order" or "Further Notice," as appropriate).

**I. INTRODUCTION / BACKGROUND**

WebLink is a mid-sized, independent company and a leader in the wireless data industry. Formerly known as PageMart Wireless, Inc., the company recently changed its name to reflect a strategic shift in the focus of its offerings from traditional paging services to more advanced, innovative services. The company provides wireless e-mail, wireless instant messaging, information on demand, wireless telemetry services, as well as traditional paging services, to over 2.5 million customers throughout the United States. The company's nationwide two-way wireless data network, using Internet protocol and Motorola's ReFlex technology, is the largest of its kind, reaching approximately 90 percent of the U.S. population. WebLink holds nationwide and regional Narrowband Personal Communications Service ("NPCS") licenses, as well as

private carrier paging licenses. The company spent over \$130 million to acquire its NPCS licenses, and was one of the first companies to complete construction of a nationwide two-way NPCS network.

In the Report & Order, the Commission, inter alia, eliminated Basic Trading Areas (“BTAs”), and implemented Major Trading Areas (“MTAs”), as the service areas for the NPCS spectrum that had already been channelized by the Commission but not yet auctioned (the “Channelized Spectrum”).<sup>1</sup> As a result, the Commission created seven paired and two unpaired MTA channels/licenses (as well as eight MTA-based response channels) within the Channelized Spectrum. In the Further Notice, the Commission requested comments on a narrow set of issues, including whether it should proceed with the licensing of the 1 MHz of reserve NPCS spectrum (the “Reserve Spectrum”), and how it should channelize that Reserve Spectrum; and whether to re-channelize the Channelized Spectrum to create larger spectrum blocks.<sup>2</sup>

WebLink is aware that the Personal Communications Industry Association (“PCIA”) is submitting comments in response to the Further Notice presenting a band plan for the NPCS spectrum. WebLink participated in the PCIA-sponsored discussions leading to the adoption of the PCIA band plan and supports the plan in so far as it concerns the sizes of spectrum blocks and channel pairing. In these respects, the band plan will benefit a diverse range of NPCS spectrum users and serve the public interest.

However, WebLink did not vote for the PCIA band plan because WebLink opposes PCIA’s proposed allocation of NPCS service areas, which primarily abandons licensing based on MTAs, and suggests that the majority of licenses should be

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<sup>1</sup> Report & Order at ¶¶ 10-14.

<sup>2</sup> Further Notice at §§ 2, 80-83.

nationwide. Thus, on the issue of service areas for NPCS licensing, the PCIA band plan does not represent the consensus of the paging industry. Indeed, on this issue, the band plan merely represents the views of the larger paging companies and conglomerates that voted for the plan. WebLink therefore opposes PCIA's efforts to persuade the Commission to abandon MTA-based licensing for NPCS spectrum in favor of nationwide and regional licensing.

## **II. DISCUSSION**

On the following procedural and substantive grounds, WebLink opposes PCIA's band plan and comments on the issue of service areas for the licensing of NPCS spectrum: (1) PCIA's request that the Commission largely abandon MTAs may be considered only in the context of a petition for reconsideration of the Report & Order, and should be dismissed in this proceeding; (2) the Commission's decision to use MTAs for licensing the Channelized Spectrum was well-reasoned, and represents a prudent compromise among diverse interests that should be affirmed; (3) the rationales for using MTA-based licensing for the Channelized Spectrum are equally applicable to the Reserve Spectrum; and (4) WebLink and hundreds of other paging companies have relied on the Commission's previous decision to license NPCS spectrum using smaller areas. WebLink discusses each of these points in further detail below.

### **A. The Commission Should Reject PCIA's Band Plan and Comments on MTA-Based Licensing Because They Are Procedurally Improper.**

PCIA's band plan and comments, in so far as they urge the Commission to abandon MTA-based licensing for the Channelized Spectrum, should be dismissed as non-responsive to the Further Notice. The Further Notice did not request comments on the Commission's unequivocal decision to use MTA-based licensing for the Channelized Spectrum. The only question that the Commission posed with respect to the Channelized

Spectrum was whether that spectrum “should be rechannelized to create licenses authorizing the use of larger blocks of spectrum.”<sup>3</sup> Consequently, changes to the service areas can be requested only in a petition for reconsideration, which PCIA has already filed, and cannot be examined in the context of the Further Notice.<sup>4</sup>

Nor can PCIA supplement its petition for reconsideration with its band plan and comments. Section 1.429(d) of the Commission’s Rules provides that a “petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice,” unless leave to do so is requested and granted.<sup>5</sup> Because the time for filing petitions for reconsideration of the Report & Order expired on July 6, 2000,<sup>6</sup> the portions of PCIA’s band plan and comments requesting that the Commission reconsider its decision to implement MTA-based licensing for the Channelized Spectrum should be disregarded.

B. The Commission’s Decision to Use MTA-Based Licensing for the Channelized Spectrum Was Well-Reasoned and Should Be Reaffirmed.

In the event that the Commission considers PCIA’s request on its merits, WebLink urges the Commission to reaffirm its well-reasoned decision to use MTA-based licensing for the Channelized Spectrum. By doing so, the Commission will promote the fundamental objectives set forth by Congress in Section 309(j) of the Communications Act (“Section 309(j)”), including by creating meaningful economic opportunities for

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<sup>3</sup> Further Notice at ¶ 83.

<sup>4</sup> PCIA filed such a petition on July 6; WebLink intends to oppose that petition.

<sup>5</sup> 47 C.F.R. ' 1.429(d) (emphasis added).

<sup>6</sup> Public notice of the Report & Order was published in the Federal Register on June 6, 2000. See 65 Fed. Reg. 35843 (June 6, 2000).

smaller businesses, and promoting the rapid deployment of new technologies and services, and the efficient use of the NPCS spectrum.

As the Commission recognized in the Report & Order,<sup>7</sup> MTA-based licensing serves the needs of a wide range of entities, including both large and smaller carriers, and thus represents a prudent compromise among diverse competing interests. Nationwide and regional licenses, while desirable and affordable for large carriers, are too costly and inefficient for small companies or those looking to augment their systems in particular areas. MTA service areas, on the other hand, create an appropriate balance, by providing large carriers much of what they desire, while at the same time protecting the interests of smaller carriers.

The Commission recognized that MTA-based licensing, coupled with opportunities for aggregating spectrum, provides a significant amount of flexibility for offering services on both a small and larger scale basis.<sup>8</sup> Those carriers that are interested in service areas larger than MTAs can easily create such areas by aggregating MTA licenses. At the same time, MTAs are not too large to be unaffordable to, and are rather manageable and efficient for, small businesses or those looking to make their existing networks more robust in particular areas. Furthermore, individual MTAs are large enough to support viable businesses because they can be used to provide wide-area service and allow for economies of scale.<sup>9</sup>

Because MTA-based licensing serves the interests of both small and large companies, the Commission's finding in the Report & Order that "MTAs are the most

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<sup>7</sup> Report & Order at & 10.

<sup>8</sup> Id.

<sup>9</sup> Id.

appropriate geographic areas for licensing the remaining narrowband spectrum”<sup>10</sup> was well-reasoned, and should not be reconsidered or abandoned. There is simply no compelling reason for the Commission to reverse this decision and adopt nationwide and/or regional licensing for the Channelized Spectrum. Indeed, a shift to nationwide and/or regional licensing likely would fundamentally undermine the ability of smaller carriers to participate in auctions, and thus would prevent them from obtaining new spectrum to provide innovative services. As the Commission observed, “[t]he record contains little support for, and considerable opposition to, the establishment of additional nationwide licenses.”<sup>11</sup>

C. The Commission’s Rationales for Using MTA-Based Licensing for the Channelized Spectrum Are Equally Applicable to the Reserve Spectrum.

In previous comments, many paging carriers, including WebLink (then PageMart) maintained that it would be premature for the Commission to auction the Reserve Spectrum.<sup>12</sup> However, WebLink agrees with the Commission’s tentative conclusion that the time is now ripe to proceed with the channelization and licensing of the Reserve Spectrum,<sup>13</sup> and requests that the Commission use MTA-based licensing for that spectrum. The rationales expressed by the Commission in support of its decision to use MTAs for licensing the Channelized Spectrum are equally applicable to the licensing of the Reserve Spectrum. Indeed, the popularity and value of wireless spectrum have increased considerably since the last NPCS auctions, making it even more critical for the

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> See Further Notice at & 82.

<sup>13</sup> Id.

Commission to ensure that the Reserve Spectrum, which may very well be the last large block of spectrum available for NPCS services for some time, is accessible to as broad a group of companies as possible.

Consequently, even if the Commission decides to create a number of regional and nationwide channels within the Reserve Spectrum, it should still license most of the Reserve Spectrum based on MTAs. The creation of primarily nationwide and regional licenses would attract numerous large carriers with the ability to outbid smaller, mid-sized and independent players, such as WebLink. Conversely, creating MTAs as the primary service areas for channels within the Reserve Spectrum will allow a broader range of companies, large and small, to participate fully in the auctions and to provide viable, innovative NPCS services.

D. The Commission Should Use MTA-Based Licensing to Minimize Harm to Carriers Such as WebLink That Have Relied on the Commission's Previous Decision to License Spectrum Using Smaller Areas.

Preservation of MTA-based licensing for the Channelized Spectrum, and adoption of primarily MTA-based licensing for the Reserve Spectrum, also are important to protect the interests of, and minimize any harm to, the hundreds of paging carriers, such as WebLink, that have for years relied on the fact that licenses based on small geographic areas would be available for later auctioning. Indeed, WebLink has formulated and executed its business plans, in part, in reliance upon the Commission's previous decision to create relatively small licensing areas.

In previous auctions, WebLink invested over \$130 million in nationwide and regional NPCS licenses. Based upon the reasonable expectation that licenses for smaller areas would be available in future auctions to augment its system on an as-needed basis, WebLink proceeded to market its nationwide services more aggressively in some

parts of the country than in others. Moreover, the design of WebLink's Internet protocol-based messaging service is premised upon the availability in particular areas of larger blocks of spectrum than those available in other areas. WebLink thus needs the ability to improve its system accordingly.

Similarly, hundreds of smaller paging carriers have constructed their networks and marketed their services in a manner dependent upon the future availability of a substantial number of NPCS channels based on manageable service areas. Many of these companies have an urgent need to fill in coverage gaps, or increase their system capacity, in particular areas. Shifting all the way from BTAs and MTAs to mostly regional and nationwide licenses likely will prevent many of these carriers from executing their business plans with respect to upgrading their networks and improving their services, and may even force such companies out of business.

Only by continuing to use MTA-based licensing for the Channelized Spectrum and creating MTAs as the primary service areas for the Reserve Spectrum can the Commission ensure that companies such as WebLink will not be greatly harmed by their reliance on the future availability of licenses for smaller service areas. Indeed, as one of the first carriers to have constructed fully a two-way nationwide NPCS network, WebLink understands more than many other paging companies the need for, and the implications of relying on, the availability of spectrum in discrete service areas to support existing networks. Based on its experience, WebLink fully supports, and requests the affirmance of, the Commission's decision to use MTAs for licensing the Channelized Spectrum, and urges the Commission to use primarily MTA-based licensing for the Reserve Spectrum.



### III. CONCLUSION

Consistent with the foregoing discussion, WebLink urges the Commission to dismiss PCIA's band plan and comments in so far as they concern MTA-based licensing for the Channelized Spectrum. On the merits, the Commission should reaffirm its decision to license the Channelized Spectrum based solely on MTAs. The conclusion that MTA-based licensing is superior to licensing based on larger service areas was well-reasoned, and will promote the fundamental objectives set forth by Congress in Section 309(j). Moreover, affirmance of that decision will minimize damage to carriers that have relied on the availability of smaller service areas. For the same reasons, the Commission should use primarily MTA-based licensing for the Reserve Spectrum.

Respectfully submitted,

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